

1 CONTOS & BUNCH
2 5855 Topanga Canyon Boulevard
3 Suite 400
4 Woodland Hills, California 91367
5 Telephone (818) 716-9400

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8 Attorneys for Defendant, GERALD ARMSTRONG

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11	CHURCH OF SCIENTOLOGY OF CALIFORNIA,)	CASE NUMBER: C 42 01 53
12)	
13	Plaintiff,)	NOTICE OF MOTION FOR LEAVE TO
14	vs.)	AMEND ANSWERS; DECLARATION OF
15	GERALD ARMSTRONG, DOES 1 through 10, inclusive,)	JULIA DRAGOJEVIC; MEMORANDUM OF
16	Defendants.)	POINTS AND AUTHORITIES; FIRST
17	MARY SUE HUBBARD,)	AMENDED ANSWERS OF DEFENDANT
18	Intervenor.)	[Proposed]
19	_____)	

20 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on _____,
22 1984, at _____ a.m., or as soon thereafter as counsel
23 may be heard in the Court to which this matter will be
24 assigned for trial, the Motion of defendant, GERALD
25 ARMSTRONG, for Leave to Amend his Answers to the Complaint
26 and Complaint in Intervention will be heard. Said Motion is

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1 made upon the ground that the ends of justice will be fur-
2 thered by allowing the proposed amendment to the answers of
3 defendant, GERALD ARMSTRONG.

4 This Motion is based upon the instant notice, the
5 attached Declaration of Julia Dragojevic, the attached
6 Memorandum of Points and Authorities, as well as upon such
7 other and further material as may be introduced at the
8 hearing on this Motion.

9 DATED: April 2, 1984

10 CONTOS & BUNCH

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12 BY: 
13 JULIA DRAGOJEVIC
14 Attorneys for Defendant,
15 GERALD ARMSTRONG
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DECLARATION OF JULIA DRAGOJEVIC

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3 I, JULIA DRAGOJEVIC, declare:

4 1. That I am an attorney at law duly licensed to
5 practice before the Courts of the State of California, and am
6 an associate in the law firm of CONTOS & BUNCH, attorneys of
7 record for defendant, GERALD ARMSTRONG.

8 2. By the Motion to File Amended Answers to the
9 Complaint and Complaint in Intervention, defendant seeks to
10 add only two affirmative defenses--one for unclean hands and
11 another for spoliation. Both the Complaint and the Complaint
12 in Intervention seek equitable relief in the form of injunc-
13 tion and declaratory relief. The original answer filed by
14 defendant contained a First Affirmative Defense for unclean
15 hands. Because said affirmative defense contained a good
16 deal of factual information which the Court found to be
17 extraneous, the Court granted plaintiff's Motion to Strike
18 said defense on November 9, 1982. (A copy of the Court's
19 Minute Order of November 9, 1982, is attached hereto as
20 Exhibit "A".)

21 3. At the time of the preparation of the original
22 Answer to the Complaint, the case was obviously in its
23 beginning stages and declarant did not have specific knowl-
24 edge as to what facts could be asserted as an affirmative
25 defense for unclean hands.

26 4. On December 15, 1982, defendant filed a Motion
27 for Leave to File an Amended Answer to the Complaint, to
28 again attempt to assert a First Affirmative Defense for

1 unclean hands. The Motion was heard on January 4, 1983, and
2 was denied because the First Amended Answer did not contain
3 any facts supporting an affirmative defense of unclean hands.
4 Declarant believed that because the Court had first stricken
5 the affirmative defense based upon extraneous and irrelevant
6 factual material, that a defense simply asserting unclean
7 hands would be sufficient.

8 5. The Court advised declarant that the affirma-
9 tive defense must allege facts connecting the allegation of
10 unclean hands to the Complaint. At the time, declarant
11 believed that through discovery facts would come to light
12 which could be used, at a later time, to reassert a defense
13 of unclean hands.

14 6. The Complaint in this action was filed August
15 2, 1982. Because it seeks equitable relief in the form of
16 injunction and declaratory relief, plaintiff received a trial
17 priority, by having the matter set for trial within one year
18 and eight months since the filing of the Complaint. Through
19 the discovery that has gone forward in the case, declarant
20 has gathered facts which would now be sufficient to support
21 an affirmative defense of unclean hands. (A copy of the
22 proposed First Amended Answers to the Complaint and Complaint
23 in Intervention are attached).

24 7. Thus, on March 16, 1984, defendant sought an
25 order shortening time to allow a Motion for Leave to File
26 Amended Answers to be heard before the first trial date of
27 March 22, 1984. The order shortening time was not granted in

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1 that the Commissioner who heard the matter did not find good
2 cause for shortening time.

3 8. The affirmative defenses set forth in answers
4 to both the Complaint and Complaint in Intervention are
5 identical in that the same issues and requests for relief are
6 contained in both Complaints.

7 Neither plaintiff nor intervenor will be prejudiced
8 by the amendment of the defendant's Answers in that defendant
9 has at all times asserted in documents filed with the Court
10 that plaintiff and intervenor have unclean hands. In that
11 regard, the amendment will require no additional discovery by
12 either side.

13 9. With respect to the affirmative defense to
14 assert spoliation, the recent case of Smith vs. Superior
15 Court, 84 Daily Journal D.A.R. 469 (January 31, 1984) has
16 recognized the civil tort of spoliation or destruction of
17 evidence. The Smith Court has stated (as more fully set
18 forth in the Points and Authorities attached hereto), that
19 public policy dictates that a party is entitled to legal
20 prosecution against spoliation of evidence.

21 10. Defendant has at all times asserted that he
22 saved the documents under seal in this case from destruction,
23 and that should the documents be returned to plaintiff and
24 intervenor, they would either be destroyed or "lost". The
25 preliminary injunction in effect in this case provides for
26 discovery of the subject materials because they are relevant
27 to other Scientology litigation, as well as to defendant
28 Armstrong's severed Cross-Complaint in this case.

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11. Defendant was unable to assert the defense of spoliation prior to this time in that the case of Smith v. Superior Court was only recently decided.

Executed this 2d day of April, 1984, at Woodland Hills, California.

I declare under penalty of perjury that the foregoing is true and correct.



JULIA DRAGOJEVIC

MEMORANDUM OF POINTS AND AUTHORITIESI. INTRODUCTION

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5 Plaintiff, Church of Scientology of California, and
6 intervenor, Mary Sue Hubbard, seek injunctive relief in this
7 action. They are asking this Court to order defendant,
8 Gerald Armstrong, to turn over all originals and copies of
9 documents pertaining to L. Ron Hubbard, which they claim he
10 took from the Hubbard archives. In addition to defendant
11 Armstrong's claim that plaintiff's and intervenor's rights to
12 these documents are no greater than his, defendant Armstrong
13 also submits that plaintiff and intervenor are not entitled
14 to equitable relief because of their previous misconduct
15 concerning these documents. In short, plaintiff's and
16 intervenor's hands are unclean.

17 In order to understand the true significance of the
18 documents which are the center of this dispute, and the
19 misconduct which causes plaintiff and intervenor to have
20 unclean hands, the Court must have an understanding of the
21 representations plaintiff and intervenor have previously and
22 extensively made about L. Ron Hubbard, the purported founder
23 of the Church of Scientology. In order to make Hubbard
24 appear to be qualified to write on the many areas he does,
25 plaintiff and intervenor have made numerous misrepresenta-
26 tions to the public about Mr. Hubbard's past. These include
27 that Hubbard was raised on a cattle ranch in Montana, that he
28 travelled extensively through Europe and Asia, that he

1 graduated from George Washington University and attended the
2 graduate school of Princeton University, that he worked
3 extensively in Hollywood and the movies in the 1930's, that
4 he had a distinguished Naval record during World War II, that
5 he was a nuclear physicist, and that he was a Hollywood movie
6 writer and director in 1946. Numerous other representations
7 about Hubbard's background have also been made by plaintiff
8 and intervenor, and these representations were extensively
9 publicized in order to convince people to take Scientology
10 courses and purchase Scientology materials.

11 In the last 20 years, as the Church of Scientology
12 has become increasingly involved in civil and criminal
13 litigation across the country, and indeed, the Northern
14 Hemisphere, it became increasingly important to plaintiff to
15 keep L. Ron Hubbard's reputation from being besmirched.
16 Since 1966, therefore, plaintiff and intervenor have con-
17 stantly claimed that Hubbard no longer has anything to do
18 with the day-to-day operations of the Church. In fact, since
19 February 1980, plaintiff and intervenor have represented in
20 numerous civil cases that they are not in communication with
21 Hubbard and do not know where he can be found. Plaintiff and
22 intervenor have made the same claims in this suit. Plaintiff
23 and intervenor have also made numerous representations in
24 litigation concerning plaintiff's tax status and financial
25 structure, that Hubbard does not control plaintiff or any
26 Church of Scientology entities, and that no income or revenue
27 which plaintiff receives inures to Hubbard's benefit. This
28 representation has also been made in numerous cases.

1 The documents which are under seal in this Court
2 prove that these representations are false, and that plain-
3 tiff and intervenor know they are false. Essentially, they
4 conclusively establish that L. Ron Hubbard is a fraud; that
5 he does not have any of the qualifications plaintiff and
6 intervenor have claimed he has; that his personal life and
7 practices completely contradict the way he is represented in
8 Church of Scientology writings; that many of the promises and
9 claims made in Scientology materials are false; that L. Ron
10 Hubbard, contrary to numerous representations of plaintiff
11 and intervenor, has since 1966, controlled the Church of
12 Scientology and other Scientology entities; that, contrary to
13 representations of plaintiff and intervenor, until 1981
14 intervenor acted as his agent in order to control the Church
15 of Scientology; that a conspiracy exists to hide the truth
16 about Hubbard's ownership and control of the Church of
17 Scientology; that there is no corporate integrity to any of
18 the Scientology organizations; and that there is a conspiracy
19 to attack and destroy individuals who seek to reveal the
20 truth about Hubbard's past and his control of Scientology.

21 Thus, the plaintiff and the intervenor come into
22 this Courtroom as perpetrators of a massive fraud upon the
23 faithful followers of Scientology, the citizens of Cali-
24 fornia, the citizens of the United States, the courts of
25 California, and the federal courts of the United States.
26 Further, as the evidence of defendant Armstrong will demon-
27 strate, plaintiff and intervenor are engaged in an extensive
28 conspiracy to conceal and destroy evidence which will prove

1 that the representations they make about L. Ron Hubbard are
2 fraudulent. In fact, the documents which are at the core of
3 this case only came to light during a massive "shredding
4 party", which was undertaken to destroy evidence of Hubbard's
5 whereabouts and his control and involvement with the Church
6 of Scientology.

7 Perhaps the culmination of the plaintiff's and
8 intervenor's fraudulent efforts was to be the "authorized"
9 biography of L. Ron Hubbard. Intended to be written by a
10 non-Scientologist, Omar Garrison, intervenor and Mr. Hubbard
11 would nonetheless have final say over the contents of the
12 biography, and it would be used to conclusively memorialize
13 their fraudulent version of the life of L. Ron Hubbard. Two
14 unwitting, and ultimately unwilling, participants in this
15 effort were Omar Garrison, who had contracted with a puppet
16 organization of the Church of Scientology to write the
17 biography, and defendant, Gerald Armstrong, who was Mr.
18 Garrison's research assistant and the Hubbard archivist. Mr.
19 Garrison and defendant Armstrong were never told that the
20 purpose of the biography was actually to conceal the truth
21 about L. Ron Hubbard.

22 Upon reviewing the documents which are now sealed
23 in this Court, defendant Armstrong and Mr. Garrison realized
24 that plaintiff and intervenor had intentionally misrepresented
25 Hubbard to the public and to the courts. At first,
26 defendant Armstrong believed this had only been through
27 innocent mistakes on the parts of members of the Church of
28 Scientology, and he attempted to work within the system to

1 let the truth about Hubbard come out. It became clear to
2 defendant Armstrong and Mr. Garrison, however, that the
3 misrepresentations were intentional, and when they announced
4 their intent to publish a true biography of L. Ron Hubbard,
5 harassment, threats and this lawsuit followed.

6 Mr. Garrison was fortunate as he was able to settle
7 with the Church of Scientology. In exchange for agreeing
8 never to publish the truth about L. Ron Hubbard, and return-
9 ing the documents in his possession, the Church entered into
10 secret settlement with Mr. Garrison.

11 Mr. Armstrong was not so fortunate. Shortly after
12 he informed officials of the Church of Scientology and
13 representatives of Hubbard about the misrepresentations that
14 had previously been made about L. Ron Hubbard, he was ordered
15 to undergo a security check. This process is essentially a
16 form of interrogation where the victim is strapped to an "E-
17 meter," a primitive lie-detector device. The questioning can
18 be brutal, and the purpose of the "sec check" is to intimi-
19 date the person being interrogated so that his thinking will
20 be "corrected". The consequences of failing a sec check can
21 be dire.

22 Apparently, defendant Armstrong did fail the sec
23 check. Only a few months thereafter, he was declared a
24 "suppressive person", which according to Scientology, meant
25 that the Fair Game Doctrine could be applied against him.
26 The Fair Game Doctrine provides that in order to combat an
27 enemy of the Church of Scientology, any tactic may be used
28 including lying to, stealing from and destroying that person.

1 The Fair Game Doctrine, in fact, was used against
2 defendant Armstrong. Evidence will prove that defendant
3 Armstrong was harassed, his family was harassed, lies were
4 spread about him, his personal property was stolen from him,
5 and there were attempts to have his car involved in an auto
6 accident, either to actually kill him, or scare him from
7 continuing to try to reveal the truth about L. Ron Hubbard.

8 The above actions were clearly taken in order to
9 intimidate the defendant from exposing the lies and frauds
10 plaintiff, intervenor and L. Ron Hubbard have perpetrated
11 over 30 years. It shows to what extent the intervenor and
12 the plaintiff will go to conceal evidence of their fraud.
13 This misconduct is also clearly related to the present case,
14 for it demonstrates specifically to what unlawful ends the
15 plaintiff and the intervenor will go to suppress the subject
16 documents and materials under seal, and to intimidate a
17 perceived enemy from exercising his legal rights.

18 Defendant believes that plaintiff and intervenor
19 seek this injunction to further their conspiracy to conceal
20 evidence of the frauds they have committed. Defendant is
21 fearful that most of the incriminating documents concerning
22 Hubbard, as well as those documents defendant and other
23 litigants may need to further their claims against plaintiff
24 and intervenor will be destroyed if this Court grants the
25 injunctive relief requested. Concealing or destroying
26 evidence of coruse, is a violation of California Penal Code,
27 §135. Moreover, destruction of evidence relevant to a
28 federal proceeding, is also considered a violation of federal

1 criminal law under the obstruction of justice statute, 18
2 U.S.C. §1503. See, United States v. Walasek, 527 F.2d 676
3 (3rd Cir. 1975).

4
5 2. THIS COURT MAY ALLOW AN AMENDMENT
6 TO ANY PLEADING ON ANY TERMS WHICH
7 THE COURT, IN ITS DISCRETION, DEEMS
8 TO BE JUST.

9 California Code of Civil Procedure,
10 §473

11
12 Code Section 473 specifically allows the Court to
13 exercise its discretion in considering whether or not to
14 allow a party to amend any pleading. The general policy of
15 the law in this State is to allow great liberality in amend-
16 ment of pleadings prior to trial, and even during trial
17 itself, so as to allow the parties to properly present their
18 causes of action or defenses thus furthering justice by
19 insuring a trial on the true merits of the case. Atchinson,
20 Topeka & Santa Fe Railroad Company v. Superior Oil Company,
21 243 Cal.App.2d 298, 52 Cal.Rptr. 53 (1966); Dunzweiler v.
22 Superior Court, 267 Cal.App.2d 569, 73 Cal.Rptr. 331 (1968).

23 The extent of this liberality is demonstrated by
24 the case of Re-Development Agency of the City of Fresno, Inc.
25 v. Herrold, 86 Cal.App.3d 1024, 150 Cal.Rptr. (1978), wherein
26 the Court held that if a Motion to Amend Pleadings is timely
27 made, and if granting of that Motion will not prejudice the
28 opposing party, it is error to refuse permission to amend,

1 and furthermore, where that refusal to amend also results in
2 the party being deprived of a right to assert a meritorious
3 defense, it is not only error but an abuse of discretion.

4 While the power of this Court to issue an injunc-
5 tion has specifically been authorized by the Legislature in
6 the California Code of Civil Procedure, §§525, et. seq.,
7 nonetheless, it is Hornbook Law that the analysis undertaken
8 by the court in granting such an injunction, as well as the
9 inherent power of the court to grant such an injunction, is
10 equitable in nature. For these reasons, one clear valid
11 defense to an injunction is that defense of unclean hands.
12 Cal.Jur.3d, Injunctions, §17.

13 The unclean hands doctrine can be stated very
14 simply:

15
16 "When a party who at, as actor,
17 seeks to set judicial machinery in
18 motion and obtain some remedy, has
19 violated conscience, good faith and
20 other equitable principles in his
21 prior conduct, the doors of justice
22 will be shut against him in limine;
23 the court will refuse to interfere
24 on his behalf, to acknowledge his
25 right, or to afford him any remedy."
26 Lynn v. Dunkel, 42 Cal.2d 845, 850,
27 299 P.2d 236, 239 (1956); DeGarmo v.

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1 Goldman, 19 Cal. 2d 755, 123 P.2d 1,
2 6 (1942).

3
4 The basis of this doctrine is to protect the integrity of the
5 court, particularly in equity matters where it acts as a
6 court of good conscience. See, De Garmo, supra; Katz v.
7 Karlsson, 84 Cal.App.2d 469, 191 P.2d 541 (1948). The
8 Supreme Court of California has called this doctrine "fun-
9 damental", De Garmo v. Goldman, supra, and in Katz v.
10 Karlsson, supra, the clean hands doctrine was called "the
11 most important rule affecting the administration of justice."

12 The importance of this doctrine is also reflected
13 in the Appellate Court's frequent admonitions to trial courts
14 to take all possible efforts to see if the doctrine applies.
15 In De Garmo v. Goldman, supra, the Supreme Court of Cali-
16 fornia stated "it is the duty of a court of equity, upon any
17 suggestion that a plaintiff has not acted in good faith
18 concerning the matters upon which he bases his suit, to
19 inquire into the facts in that regard." Similarly,
20 Rosenfield v. Zimmer, 116 Cal.App.2d, 719, 254 P.2d 137 held
21 that "it is the duty of a trial court upon the discovery that
22 the transaction is tainted with fraud or lack of good faith
23 to inquire into the facts in regard thereto. See also, Howe
24 v. Brock, 194 P.2d 762, 765 (1948).

25 In cases such as this one where the plaintiff and
26 intervenor seek to use equitable relief to forward the
27 frauds they have committed, the law makes it plain that
28 equitable relief cannot be granted in assisting a party to a

1 fraudulent scheme to secure the objective of his plan.
2 Rosenfield v. Zimmer, supra. That, of course, is precisely
3 why the plaintiff and intervenor are before this Court. They
4 have perpetrated a massive fraud to misrepresent the back-
5 ground of L. Ron Hubbard, his beliefs and practices, and his
6 control of the Church of Scientology. They have not only
7 made deliberate misrepresentations to the public in order to
8 procure millions of dollars through their fraudulent misrep-
9 resentation about Mr. Hubbard and Scientology, but they have
10 also sought to defraud this and other courts into believing
11 that Mr. Hubbard has virtually no connection with the Church
12 of Scientology. In order to forward this claim, the plain-
13 tiff and intervenor have willfully and deliberately destroyed
14 evidence relevant to federal and state court proceedings and
15 have sought to terrorize individuals such as the defendant
16 who attempted to expose the frauds they had committed.

17 In fact, the misconduct by the intervenor and the
18 plaintiff is so "flagrantly unconscionable" that even if the
19 defendant did not plead the clean hands doctrine as a
20 defense, the court would be compelled to raise it itself.
21 See, Katz v. Karlsson, supra, Sears Roebuck & Co. v. Blade,
22 294 P.2d 140 19 (1956); Vehm v. Fireside Thrift Co., 272
23 Cal.App.2d 15, 76 cal.Rptr. 49 (1969). Katz v. Karlsson is
24 the most famous case where the conduct was found to be so
25 outrageous that the court felt obligated to raise the clean
26 hands doctrine sua sponte. There, the husband who sought an
27 annulment of a divorce which was granted to his wife, either
28 lied to the Court in his affidavit, or had obtained an

1 interlocutory divorce by collusion and concealing evidence
2 from the Court. In either case, the appellate division found
3 that his conduct was so flagrantly unconscionable, that even
4 if the clean hands defense had not been raised at the trial
5 court level, the appeals court had no choice but to reverse
6 the decision to annul his divorce.

7 In this case, of course, the plaintiff's and
8 intervenor's misconduct is a great deal more serious than
9 making misrepresentations to the Court, conduct the Katz
10 court found to be flagrantly unconscionable. Not only have
11 the plaintiff and intervenor lied to this Court and other
12 courts, but they have deliberately concealed evidence,
13 intentionally destroyed evidence, unlawfully attempted to
14 intimidate witnesses, including defendant who testified
15 against them in this case, and have engaged in a massive
16 scheme to defraud thousands of people out of millions of
17 dollars. Plainly, this sort of conduct to grossly violates
18 conscience, good faith and other principles of equity, that
19 this court could not grant equitable relief even if the
20 defendant did not plead the clean hands doctrine.

21 Amendment of the defendant's answer at this time
22 will not prejudice the other parties in this case. Defendant
23 is not adding a new defense at the last hour, but simply
24 reinstating a defense plaintiff and intervenor have been
25 aware of since defendant's original answer was filed. The

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1 amendment at this time, in fact, is a correction of a tech-
2 nical error.

3 The duty of this Court to investigate any sug-
4 gession that a party seeking equitable relief has engaged in
5 bad faith or fraudulent conduct, and the heinous nature of
6 the conduct the plaintiff and the intervenor have engaged in
7 all strongly indicate that this Court should permit the
8 defendant to amend his answer. Add to this the fact that
9 defendant's amendment is really a correction of a technical
10 deficiency and that the parties will not be prejudiced by
11 such an amendment since they have been on notice from the
12 beginning of this case that the defendant intended to raise a
13 clean hands defense.

14
15 3. THE PROPOSED AMENDMENT OF
16 SPOILIATION IS A VIABLE DEFENSE
17 TO PLAINTIFF'S AND INTERVENOR'S
18 ACTIONS.

19
20 In Smith v. Superior Court, 84 Daily Journal D.A.R.
21 469 (January 31, 1984), Phyllis Smith was driving her car
22 southbound on California Avenue in West Covina. Ramsey Sneed
23 was driving a 1979 Ford Van northbound on California Avenue,
24 at approximately the same time and place, when the left rear
25 wheel and tire flew off the van and crashed in the windshield
26 of Phyllis Smith's vehicle. The impact caused pieces of
27 glass to strike her in the eyes and face, resulting in
28 permanent blindness in both eyes and impairment of her sense

1 of smell. Abbott Ford was the dealer that customized the van
2 with "deep dish mag wheels" before it sold the van to Sneed.
3 Immediately after the accident, the van was towed to Abbott
4 Ford for repairs. Abbott Ford agreed with Smith's counsel to
5 maintain certain automotive parts (physical evidence),
6 pending further investigation. Thereafter, Abbott Ford
7 destroyed, lost or transferred said physical evidence, making
8 it impossible for Smith's experts to inspect and test those
9 parts in order to pinpoint the cause of the failure of the
10 wheel assembly on the van. Plaintiffs' second amended
11 complaint contained an eighth cause of action entitled
12 "Tortious Interference with Prospective Civil Action by
13 Spoliation of Evidence" against Abbott Ford. In response to
14 a demurrer to said cause of action, the court sustained the
15 demurrer, without leave to amend. Plaintiff petitioned the
16 Court of Appeal for a writ of mandate, seeking relief from
17 the Court's sustaining of the demurrer without leave to
18 amend. The court, in issuing a writ of mandate, stated:

19
20 While intentional spoliation of
21 evidence has not been recognized as
22 a tort heretofore, we conclude that
23 a prospective civil action in a
24 products liability case is a
25 valuable 'probable expectancy' that
26 the court must protect from the kind
27 of interference alleged herein."

28 * * * *

1 "Public policy dictates that the
2 Smiths' interests in their prospec-
3 tive civil litigation are entitled
4 to legal protection against Abbott
5 Ford's alleged intentional spolia-
6 tion of evidence, even though their
7 damages cannot be stated with cer-
8 tainty."

9 84 Caily Journal D.A.R. at 470
10 (emphasis added).

11
12 In the present case, defendant, Gerald Armstrong,
13 seeks to amend his Answers to the Complaint and Complaint in
14 Intervention to include an affirmative defense based upon the
15 decision in Smith v. Superior Court. Defendant, Armstrong,
16 is not seeking to recover monetary damages from plaintiff or
17 intervenor. Rather, the proposed amendment to the answer
18 merely seeks to preclude plaintiff and intervenor from
19 benefiting from acts or omissions to act which might lead to
20 the loss, destruction or spoliation of the evidentiary value
21 of the subject materials under seal, to the detriment of all
22 parties who seek discovery of said materials. The amendment
23 further seeks to preclude plaintiff and intervenor from
24 obtaining a return of the subject materials by way of equity.

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4. CONCLUSION

Based upon the foregoing, it is respectfully requested that this Court grant defendant, Armstrong, leave to amend his Answers to the Complaint and Complaint in Intervention and that the proposed First Amended Answers which are attached hereto as Exhibits "B" and "C", be deemed filed and served as of the date of the hearing.

DATED: April 2, 1984

CONTOS & BUNCH

BY: 
JULIA DRAGOJEVIC
Attorneys for Defendant,
GERALD ARMSTRONG

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